

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.18595 of 2005

04.10.2005

Between:

Akashvani Employees Cooperative Housing Society Ltd.,

Represented by its Secretary Sri M.Sudhakar Rao,

Hyderabad.

... Petitioner

AND

The Commissioner, L.B.Nagar Municipality, Ranga Reddy District.

... Respondent

ORDER:

Akashvani Employees Cooperative Housing Society Limited seeks a writ of Mandamus declaring the action of the respondent Municipality in laying road through open 'B' space in the approved HUDA layout is illegal and arbitrary being contrary to the instructions issued by the Government in G.O.Ms.No.72, dated 20.2.2002.

It is the case of the petitioner that the society purchased land in Survey No.57 (part) of Karmanghat village for the purpose of providing residential houses to its members. The layout was submitted to HUDA which was approved the same in 1983. The petitioner developed plots and allotted them to its members to construct residential houses. According to the petitioner, there is an open space on the northern half of the layout as well as southern half of the layout. Be that as it is, after obtaining permission from the Municipality, the petitioner society erected fencing surrounding 'B' space (open space on the southern side). Having come to know that the respondent Municipality is contemplating to lay the road through 'B' space, the petitioner filed the present writ petition.

The learned Counsel for the petitioner, Sri N.Mukunda Reddy, submits that the open space in question forms part of the layout, which belongs to the society. The society has constructed a fencing to protect the land. According to the learned Counsel, as per the G.O.Ms.No.72, all the Municipalities were directed not to utilize the reserved open spaces in a layout for the purposes other than the intended original use such as park, playground, community structure, urban forestry. **Per contra**, the learned Standing Counsel for respondent Municipality, Sri P. Radha Krishna, relies on Rule 10 of A.P. Municipalities (Layout) Rules, 1970 (hereafter called, the Rules) and submits that the open space in an approved layout vests with the Municipality free of cost and therefore, the society cannot claim the open space belongs to it. He further submits that when any developed work like laying down

road is taken up the G.O.Ms. No.72 is not a bar.

A copy of the layout is annexed to the writ petition. The same would show that except left as open space, the same is not specifically reserved for the purpose of park, playground or community structure. Therefore, the instructions issued by the Government in G.O.Ms.No.72, dated 20.2.2002 do not in any manner come to the rescue of the petitioner society. Secondly, as per sub-rule (1) of Rule 10 of the Rules, every owner of a layout is required to set apart 5% of the gross area covered by layout as open space and as per sub-rule (2) of Rule 10 of the Rules, the owner of such land shall have to transfer such open space to Municipality free of cost. Even HUDA Layout Rules also contain a similar rule. Therefore, it would be futile to the petitioner to contend that the open space belongs to the petitioner society. Whenever a layout is approved by the Panchayat, Municipality or Municipal Corporation, all the roads, green belt areas, open spaces and community structures vest with the Panchayat, Municipality or Municipal Corporation and the owner of the layout cannot claim any such right especially when the layout approval is granted subject to such conditions. If for the purpose of laying down the road, the part of the open space is utilized, which was not specifically reserved for park, playground, community structure, there cannot be any objection.

The writ petition is misconceived and is, accordingly, dismissed. No costs.

October 04, 2005. (V.V.S.RAO,J)

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